

REMARKS/ARGUMENTS

1. The Examiner has refused to enter Applicant's after-final amendment filed on September 29, 2003 ("AF Amendment") on the basis that claims 4, 5, and 8 allegedly claim matter that was not previously claimed or disclosed. For the reasons set forth more fully below, Applicant respectfully requests that the Examiner withdraw his refusal and enter the AF Amendment.

2. In the AF Amendment, claims 1 and 7 were amended to include the "upward" flow limitation previously presented and examined with respect to claims 13 and 14. Claims 4, 5 and 8 were not amended in the AF Amendment. However, as a result of the amendments to claims 1 and 7, the Examiner asserts that dependent claims 4, 5, and 8 now define an "upward" water jet that was not previously claimed or disclosed. Assuming *arguendo* and without prejudice that the Examiner's construction of claims 4, 5 and 8 is accurate, Applicant respectfully disagrees with the Examiner's position that the limitation of an "upward" water jet was not previously claimed or disclosed.¹

Paragraph [0010] on page 3, lines 17-18 of Applicant's originally filed specification expressly states that "[t]he invention may also include water jets to direct the flow of water either *upwardly* out of the upwardly facing armrest surface or generally horizontally out of a forward facing surface of the armrest." (Emphasis added.) Additionally, paragraph [0035] on page 9, line 23 through page 10, line 1 of Applicant's specification discloses that the "armrest 260 may be provided with a water jet 263 only, either in the side wall 262 *or the armrest surface 264*." (Emphasis added). The armrest surface 264 is clearly shown and disclosed with respect to FIG. 5 as being generally horizontal; whereas, the side wall 262 is clearly shown and disclosed with respect to FIG. 5 as being generally vertical. Thus, the water jets direct water in a generally upward direction when positioned in the armrest surface 264 as disclosed.

Based on the foregoing, claims 4, 5, and 8 are clearly supported by Applicant's specification. Moreover, claims 4, 5, and 8 as presented in the AF Amendment contain the same language as was previously presented. Therefore, the Examiner clearly considered and searched

¹ Applicant notes that there is no water jet limitation in claim 4. Rather, claim 4 simply requires the pressurized fluid to be water. Support for claim 4 is located throughout Applicant's specification, including in paragraph [0007] on page 2, lines 20-22.

the subject matter of claims 4, 5, and 8 previously. As a result, Applicant is confused as to the basis for the Examiner's refusal to enter the AF Amendment.

Due to Applicant's confusion, Applicant's undersigned representative conducted a telephonic interview with the Examiner on October 15, 2003. Applicant would like to thank the Examiner for taking the time to speak to Applicant's representative regarding the issues raised in the Advisory Action and to briefly discuss the Savage, Satterfield and Jacuzzi references.

During the interview, the Examiner asserted that the amendments to claims 1 and 7 introducing the "upward" limitation previously recited in now cancelled claims 13 and 14 changed the scope of claims 4, 5, and 8 and possibly all other claims that are dependent upon claims 1 and 7, thereby raising new issues. For example, with respect to claim 4, the Examiner asserts that an "orifice sized and shaped to direct a flow of at least one of pressurized [water] and pressurized air upward onto at least one of a hand, a finger and a forearm of the bather" (substituting "water" as the "fluid" recited in claim 1 as required by claim 4) raises a new issue even though the Examiner had previously considered and examined the following two separate limitations:

A) "orifice sized and shaped to direct a flow of at least one of pressurized [water] and pressurized air upward onto at least one of a hand, a finger and a forearm of the bather" (previously present claim 4); and

B) "orifice sized and shaped to direct a flow of at least one of pressurized fluid and pressurized air upward onto at least one of a hand, a finger and a forearm of the bather" (previously presented, and now cancelled, claim 14).

Applicant respectfully disagrees with the Examiner's conclusion. Clearly, the Examiner considered and searched for all the various limitations in the presented claims. In other words, with respect to previously presented claims 4 and 14, the Examiner clearly searched the prior art for a reference that disclosed an "orifice sized and shaped to direct a flow of at least one of pressurized [water] and pressurized air upward onto at least one of a hand, a finger and a forearm of the bather" and a reference that disclosed an "orifice sized and shaped to direct a flow of at least one of pressurized fluid and pressurized air upward onto at least one of a hand, a finger and a forearm of the bather." If both references, or a single reference allegedly disclosing both claimed features, exist, then such reference(s) should have already been found during examination of the

original claims and those presented in Applicant's amendments filed March 24, 2003 and May 15, 2003. Such reference(s) could then simply be applied to claim 4 presented in the AF Amendment, and arguments in the AF Amendment as to the patentability of claim 4 in view of such reference(s) properly considered, without necessitating any further search. If such reference(s) do not exist, then claim 4 presented in the AF Amendment is allowable. It is somewhat incredible to believe that the subject matter of previously presented, unamended dependent claims can raise new issues requiring a new search simply because the independent claims from which such dependent claims depend were amended to include limitations that were *also* previously considered and examined by the Examiner. While the Examiner and Applicant's undersigned representative were unable to come to any agreement during the interview, Applicant respectfully requests the Examiner reconsider his refusal to enter the AF Amendment and, after such reconsideration, enter the AF Amendment.

3. The Examiner is invited to contact the undersigned by telephone, facsimile or email if the Examiner believes that such a communication would advance the prosecution of the instant application. Please charge any necessary fees associated herewith, including extension of time fees (if applicable and not paid by separate check), to the undersigned's Deposit Account No. 50-1111. However, since Applicant's AF Amendment was timely filed and, for the reasons set forth above, should have been entered, Applicant submits that no fees, whether for an extension of time or otherwise, should be due at this time in order to consider this response to the Advisory Action.

Respectfully submitted,

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